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BOOK REVIEWS.

G. FORREST BUTTERWORTH, JR., *Editor-in-Charge.*

RAILROAD RATE REGULATION WITH SPECIAL REFERENCE TO THE POWERS OF THE INTERSTATE COMMERCE COMMISSION UNDER THE ACTS TO REGULATE COMMERCE. By JOSEPH HENRY BEALE and BRUCE WYMAN, Second Edition, Bruce Wyman. New York: BAKER, VOORHIS & COMPANY. 1915. pp. xcvi, 1210.

This treatise, as its title indicates, is a second edition of one of the best known of the large crop of books published in recent years, during which the agitation for railroad regulation has been so productive of new legislation on the subject. It is over eight years since the first edition was put out by Professors Beale and Wyman and during the interval there have been scores of State statutes and many amendments of the interstate laws regulating carriers. During the same period there has been an avalanche of judicial decision on the same subjects.

The volume now at hand makes some use of State decisions for the illustration of general principles but confines itself largely, as its title indicates, to the vast growth of railroad rate regulation under the Interstate Commerce Act. In the main, the book is a useful one to the student and practitioner because it brings together, in available form, an intelligent digest of the accumulated cases.

The author's discussion of cases seldom broadens out beyond the scope of the usual digest. This is to be regretted, for there is hardly a subject of law which so readily lends itself to philosophical and broad treatment as does the branch with which this volume deals. Even though the decisions rest in so many instances upon hard and fast statutory provisions, the field considered is nevertheless so much under the influence of the same broad economic principles which stimulated the enactment of the statutes that it is peculiarly stimulating to philosophic discussion.

Where the Author does permit himself to indulge in theorizing he is not always happy in his results. His espousal of the cost of service as a basis for ratemaking seems to the writer particularly unfortunate. To the experienced practitioner in rate litigations, the cost of service seems to have as little to do with the reasonableness of the resulting rate as the cost to a lawyer of rendering a given opinion would have to do with the fee he would charge for the service.

A very interesting illustration of the negligible practical influence of the cost of service on the resulting rate is afforded by a recent case which the Interstate Commerce Commission undertook upon its own motion in the Matter of Rates, Practices, Rules and Regulations Governing the Transportation of Anthracite Coal, 35 I. C. Reports 220. The proceeding involved an effort on the part of the Commission to find the reasonable rates for the transportation of anthracite coal over ten different railroads from the producing anthracite field to all points in what is known as Official Classification Territory. The accountants of the Commission made the most elaborate investigation as to cost of service that has ever been made in railroad rate litigation. When the Commission came to apply the accountant's conclusions and made the rates, it would seem that they gave absolutely no weight to the cost figures of their own experts. The latter had found that the cost of transporting anthracite coal of all sizes to New York Harbor was about 60c. from the Wyoming Region, 50c. from the

Upper Lehigh Region and 45c. from the Lehigh Region. The Commission then proceeded to establish as reasonable rates \$1.45 for what are usually known as domestic sizes and \$1.35 for what are known as steam sizes of anthracite coal. Thus it will be observed that although the cost of transporting the domestic sizes varied greatly from the three different regions to New York Harbor, the Commission fixed exactly the same rate from all three regions on the domestic sizes. The same is true as to the rates from all three regions for the steam sizes of anthracite. On the other hand, although the cost of transporting both of these kinds of anthracite coal was the same from any one region, the rates were different on the two kinds of coal.

Here is a case where the Commission had every motive for applying the cost of service as a basis for ratemaking had they chosen to do so. All of the work was their own and presumably had their endorsement as being scientifically accurate; yet they utterly abandoned the cost of service as a basis for making the rates because ordinary everyday commercial conditions could not permit of it. No matter how the cost of service varied from the different regions, the Commission could not put the producer in one region at a disadvantage in comparison with the producer in another region, both marketing their coal in competition at New York Harbor. On the other hand, although the cost of transportation was identical on both sizes of coal, the Commission recognized, just as the ordinary railroad Traffic Manager recognizes, that the fuel for domestic consumption was a traffic which would bear a higher rate than the fuel used for steam raising purposes in competition with the cheaper fuel—bituminous coal.

Aside from these more circumscribed commercial conditions, which always make absolutely useless cost of service as a factor in rate-making, there are more important and broader principles which even more strongly tend to produce the same result. In the first place, the imperfections of railroad cost accounting prevent the employment of cost service as a usable basis of ratemaking. If, however, cost accounting had advanced to the point where a scientific estimate of transportation cost could be made, it could not be used. Any plan whereby all articles of traffic shall be inhibited from paying more than their movement cost plus their proportion on any arithmetical basis, of all other cost, means the complete bankruptcy of practically all the railroads of the United States because it leaves them no practicable sources from which to obtain reimbursement for the general costs attributed to traffic which cannot afford to pay them.

A simple illustration is afforded by the passenger business. It is undoubtedly true that on all but two or three railroads of the United States the passenger business is conducted at an absolute loss. In the face of regulatory statutes and activities of State Commissions reducing the existing non-compensatory passenger rates, it is, of course, utterly impossible to increase the passenger rates. The only alternative is that the freight business must make up what the passenger business fails to pay of the general expenses of conducting the railroad plant.

Further analysis will show that the freight traffic itself presents considerations of a similar character. There are many kinds of freight traffic that do not pay their full proportion of the cost of running a railroad. Only one alternative confronts the management—either these rates must be raised or the deficiencies must be made up by other traffic. In ninety-nine cases out of a hundred the rates cannot be increased on the traffic we are considering because such increases

would put an end to the traffic. Driving that traffic away in this manner would still further increase the cost to be borne by the traffic remaining. If the low paying traffic cannot afford to pay much more than its movement cost, it is better, rather than to abandon it, to let it pay its movement cost, and to let those classes of traffic which can afford to pay more, bear the general costs and the taxes, the rentals and the legitimate return to investors which could not be paid by the low-paying traffic.

These simple economic laws cannot be violated by the railroad manager and that being the case, the cost of service retains nothing but an academic interest as a factor in ratemaking. It has no practical value whatever.

On the whole, the treatise of Prof. Wyman is a ready help to the student, the teacher or the practitioner. Its great value lies, as has been said, in the fact that it assembles and arranges in topical form the great accumulation of recent cases on the subject discussed.

Jackson E. Reynolds.

THE PROTECTION OF NEUTRAL RIGHTS AT SEA. Documents on the Naval Warfare, with an introduction by WILLIAM R. SHEPHERD, Professor of History in Columbia University. New York: STURGIS & WALTON Co. 1915. pp. iii, 129.

Assuming, as he states in his introduction, "that 'Britannia' and 'Germania' are the queens, and their respective allies only the minor pieces, in the war game of the world", Professor Shepherd has gathered together the more important diplomatic notes which have passed between the United States on the one hand, and Great Britain and Germany on the other, from the beginning of the present conflict up to and including the German memorandum of September 7th, 1915, in reference to the sinking of the "Arabic". In so doing he has performed a valuable service to those of the American people who desire to form an opinion of the relationship of the United States with these two belligerents.

As a preface to the diplomatic correspondence is placed that part of the Declaration of London dealing with Contraband of War. Referring to this declaration a footnote by Professor Shepherd states that it failed of ratification, the inference of course being that the Declaration of London *per se* has not, and never has had, the binding force of International Law. Then follow the proposal of the United States to the belligerents that the Declaration of London be adopted as a temporary code of naval warfare; the acceptance by Germany, "provided its provisions are not disregarded by other belligerents"; and the notification by Great Britain of its decision "to adopt generally the rules of the declaration in question, subject to certain modifications and additions which they judge indispensable to the efficient conduct of their naval operations". These attitudes were to be expected. In answer to these replies we have the American note withdrawing the above proposal and defining the policy of the United States irrespective of the Declaration of London.

After Great Britain had declared the North Sea a military area, and Germany had retaliated by declaring the waters surrounding Great Britain and Ireland a war zone, the United States in the note dated February 20th, 1915, proposed the adoption of certain "reciprocal concessions" which would support the rights of Neutrals. Germany accepted this proposal in substance, but Great Britain saw fit not only to reject it, but virtually prohibited neutral trade with Ger-